



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/308,394	11/30/2011	Peter Henry Tu	251010-1 (GELC:0073)	1012

62204 7590 06/14/2017
GE GLOBAL PATENT OPERATION
GE LICENSING (62204)
901 MAIN AVENUE
NORWALK, CT 06851

EXAMINER

SYROWIK, MATHEW RICHARD

ART UNIT	PAPER NUMBER
----------	--------------

3622

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

06/14/2017

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rlt@zpspatents.com
docket@fyiplaw.com
gpo.mail@ge.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER HENRY TU, MARK LEWIS GRABB,
XIAOMING LIU, and TING YU

Appeal 2016-002485
Application 13/308,394¹
Technology Center 3600

Before MICHAEL J. STRAUSS, NABEEL U. KHAN, and
AARON W. MOORE, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify General Electric Company as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

THE INVENTION

Appellants' invention relates to an advertising system that tracks encounters between a potential customer and an advertising station, and selects advertising based on the tracked encounters. *See* Abstract.

Exemplary independent claim 1 is reproduced below.

1. A system comprising:

an advertising station configured to output advertising content to a potential customer; and

a data processing system including a processor and a memory having application instructions for execution by the processor, the application instructions including:

an identification engine to identify the potential customer;

a tracking engine to track encounters between the potential customer and the advertising station; and

a content engine to select the advertising content to be output to the potential customer based on the tracked encounters between the potential customer and the advertising station, wherein the advertising content comprises episodic content.

REFERENCES AND REJECTIONS

1. Claims 1–12 stand rejected under 35 U.S.C. § 101 as directed to nonstatutory subject matter. Final Act. 11–12.

2. Claims 1–9, 11, and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sharma (US 7,921,036 B1, issued Apr. 5, 2011) and Fenton (US 7,225,233 B1, issued May 29, 2007). Final Act. 13–17.

3. Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sharma, Fenton, and Tischer (US 2007/0271580 A1, published Nov. 22, 2007). Final Act. 17–18.

ANALYSIS

NON-STATUTORY SUBJECT MATTER

The Examiner finds claims 1–12 are directed to “the concept of selecting advertising content based on observed behavior of a potential customer(s),” which the Examiner finds is “a fundamental economic practice and/or a method of organizing human activities.” Final Act. 12. Thus, the Examiner concludes the claimed subject matter is drawn to an abstract idea. *Id.* The Examiner further finds “[t]he claims do not recite limitations that are ‘significantly more’ than the abstract idea.” Final Act. 12.

Appellants argue “the claims are directed to a system including an advertising station and a data processing system having a processor and a memory having application instructions for execution by the processor. Thus, the claims are directed to a machine or manufacture, which is a statutory category of invention.” App. Br. 5–6.

Appellants further argue “the functions performed by the recited system are not generic functions performed using a generic computing system, but instead are specific instructions or functions implemented by the recited system to increase customer interest and effectiveness of the recited advertising system.” App. Br. 6. According to Appellants, “the claims address a challenge that is particular to advertising” (App. Br. 6) and

“clearly provide improvements in the field of advertising and outputting advertising to nearby persons” (App. Br. 7).

We are unpersuaded by Appellants’ arguments. We turn to the two-step analysis laid out in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–78 (2012)). As to step one, we find the Examiner did not err in finding the claims are directed to a judicially recognized abstract idea. Claim 1 is directed to a system comprising an advertising station with a processor and memory that identifies a potential customer, tracks previous encounters with that customer, and outputs advertising based on previous encounters with the customer. *See* App. Br. 21. In view of the claim’s limitations, we agree with the Examiner that claim 1 is directed to selecting advertising content based on tracked encounters with a potential customer, and, therefore, directed to a fundamental economic or commercial practice. *See Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (finding the practice of tailoring advertising to individual customers to be a “fundamental . . . practice long prevalent in our system”); *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714–15 (Fed. Cir. 2014) (finding “showing an advertisement before delivering free content” to be an abstract idea).

Applying step two of the framework, we also agree with the Examiner that the claim, when viewed as a whole, does not include anything significantly more than the abstract concept of selecting advertising content based on observed behavior of a potential customer. Emphasizing the claimed hardware elements, such as the data processing system, processor, and memory (*see* App. Br. 5–6), Appellants argue the claims are not directed

to an abstract idea but to a *system*. However, we agree with the Examiner that these hardware elements are generic computer elements used to perform routine and conventional functions. *See* Ans. 9. As our reviewing court has explained, “[i]t is well-settled that mere recitation of concrete, tangible components is insufficient to confer patent eligibility to an otherwise abstract idea. Rather, the components must involve more than performance of “well-understood, routine, conventional activities previously known to the industry.” *In re TLI Comms. LLC Patent Litigation*, 823 F.3d 607, 613 (Fed. Cir. 2016) (quoting *Alice*, 134 S. Ct. at 2359).

Notably, the claims are not directed to improving computer technology. Therefore, even if the claims are directed to “improvements in the field of advertising and outputting advertising to nearby persons” (Reply Br. 6), as alleged by Appellants, such improvements are still directed at the field of advertising itself and not to the technology implementing that advertising.

Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101. Appellants do not separately argue claims 2–12 and, therefore, we affirm the Examiner’s rejection of these claims as well.

OBVIOUSNESS REJECTIONS

The Examiner finds Sharma teaches or suggests all of the limitations of claim 1, except that Sharma “arguably fails to explicitly disclose wherein the advertising content comprises episodic content.” Final Act. 14. The Examiner relies upon Fenton as teaching advertising content comprising episodic content. Final Act. 14 (citing Fenton 37:64–38:7).

Appellants argue “Fenton teaches that goods or services of a company may be featured in a single story line However nothing in Fenton

discloses advertising content comprising episodic content (*e.g.* advertising content divided multiple, separate episodes), much less outputting episodic content based on *tracked encounters*” App. Br. 11.

We agree with Appellants that Fenton does not teach or suggest episodic content. Although the relied upon portions of Fenton teach or suggest a story line, Fenton does not disclose that this story line is episodic. We disagree with the Examiner’s interpretation that “episodic content” encompasses standard video content simply because video content consists of moving images viewed sequentially. We do not find Appellants’ comments made on page 10 of Appellants’ Amendments filed January 15, 2014, describing “episodic content” as “content . . . intended to be viewed sequentially,” to indicate that “episodic content” be interpreted in a way different than its plain meaning viewed in light of the Specification. Instead we find Appellants’ comment was intended to parallel the Specification’s description of “episodic content.” *See* Spec. ¶ 55 (describing episodic content as “including ten episodes intended to be viewed sequentially” where the advertising system “determine[s] how many of the episodes have been output to the user in the past . . . and may select the appropriate episode for current output”).

Accordingly, we do not sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner’s rejection of claims 2–12, which depend from claim 1.

DECISION

The Examiner's rejection of claims 1–12 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–12 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED